

Federal Railroad Administration, DOT

§ 238.15

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

[64 FR 25660, May 12, 1999, as amended at 69 FR 30595, May 28, 2004; 72 FR 51198, Sept. 6, 2007; 73 FR 79704, Dec. 30, 2008]

§ 238.13 Preemptive effect.

(a) Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

(b) This part establishes Federal standards of care for railroad passenger equipment. This part does not preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part, including a plan or program required by this part. Provisions of a plan or program that exceed the requirements of this part are not included in the Federal standard of care.

(c) Under 49 U.S.C. 20701–20703 (formerly the Locomotive (Boiler) Inspection Act), the field of locomotive safety is preempted, extending to the design, the construction, and the material of every part of the locomotive and tender and all appurtenances thereof. To the extent that the regulations in this part establish requirements affecting locomotive safety, the scope of preemption is provided by 49 U.S.C. 20701–20703.

[75 FR 1227, Jan. 8, 2010]

§ 238.15 Movement of passenger equipment with power brake defects.

Beginning on January 1, 2002, the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Adminis-

trator for Safety as provided in § 238.1(c) of this part.

(a) *General.* This section contains the requirements for moving passenger equipment with a power brake defect without liability for a civil penalty under this part. Railroads remain liable for the movement of passenger equipment under 49 U.S.C. 20303(c). For purposes of this section, § 238.17, and § 238.503, a “power brake defect” is a condition of a power brake component, or other primary brake component, that does not conform with this part. (Passenger cars and other passenger equipment classified as locomotives under part 229 of this chapter are also covered by the movement restrictions contained in § 229.9 of this chapter for those defective conditions covered by part 229 of this chapter.)

(b) *Limitations on movement of passenger equipment containing a power brake defect at the time a Class I or IA brake test is performed.* Except as provided in paragraph (c) of this section (which addresses brakes that become defective en route after a Class I or IA brake test was performed), a commuter or passenger train that has in its consist passenger equipment containing a power brake defect at the time that a Class I or IA brake test (or, for Tier II trains, the equivalent) is performed may only be moved, without civil penalty liability under this part—

(1) If all of the following conditions are met:

(i) The train is moved for purposes of repair, without passengers;

(ii) The applicable operating restrictions in paragraphs (d) and (e) of this section are observed; and

(iii) The passenger equipment is tagged, or information is recorded, as prescribed in paragraph (c)(2) of this section; or

(2) If the train is moved for purposes of scrapping or sale of the passenger equipment that has the power brake defect and all of the following conditions are met:

(i) The train is moved without passengers;

(ii) The movement is at a speed of 15 mph or less; and

(iii) The movement conforms with the railroad's air brake or power brake instructions.